

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J LBR 9004-1(b)

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In Re

AMERICAN CENTER FOR CIVIL JUSTICE, INC.,

Debtor.

CHAPTER 11

CASE NO.: 18-15691/CMG

Judge: Hon. Christine M. Gravelle

**CERTIFICATION OF JEFFREY E. LIVINGSTON, ESQ. IN OPPOSITION TO
DEBTOR'S MOTION TO QUASH SUBPOENAS SERVED ON CAPLIN & DRYSDALE
AND LOEB & LOEB, AND IN SUPPORT OF CROSS-MOTION TO COMPEL**

I, Jeffrey E. Livingston, Esq. of full age, hereby certify as follows:

1. I am licensed to practice law in the State of New York, and have been admitted in this proceeding *pro hac vice*. I am a member of the firm Livingston Howe LLP and serve as co-counsel to Michael Engelberg, a creditor and party-in-interest in the above captioned bankruptcy

case of the American Center for Civil Justice, Inc. (the “Debtor”). As such, I am familiar with the law and facts concerning the Debtor’s bankruptcy proceedings.

2. I submit this Certification in support of Michael Engelberg’s opposition to the Debtor’s motion (Docket No. 327) to quash subpoenas served on Caplin & Drysdale, Chartered (“Caplin & Drysdale”) and Loeb & Loeb LLP (“Loeb & Loeb”), and in support of his cross-motion to compel compliance with those subpoenas.

3. Annexed hereto as Exhibit A is the subpoena issued to Caplin & Drysdale.

4. Annexed hereto as Exhibit B is the subpoena issued to Loeb & Loeb.

5. Annexed hereto as Exhibit C is a draft letter to the IRS prepared by Caplin & Drysdale, dated August 13, 2013. This letter is part of Exhibit 11 to the Complaint filed by Dr. Engelberg in the derivative action he commenced on behalf of the Debtor, known as *Engelberg v. Perr*, N.Y. State Supreme Court, Nassau County, Index No. 606919/2014. In the Complaint, Dr. Engelberg alleges that this letter was provided to his counsel, Jonathan Bach, Esq., of the firm Cooley LLP, by Caplin & Drysdale.

6. Annexed hereto as Exhibit D is a September 17, 2013 e-mail from Mr. Bach to Caplin & Drysdale. This letter is Exhibit 13 to the Complaint in *Engelberg v. Perr*.

7. Annexed hereto as Exhibit E is a revised draft of the Caplin & Drysdale letter to the IRS, dated December 12, 2013. This letter is also part of Exhibit 11 to the Complaint in *Engelberg v. Perr*.

8. Annexed hereto as Exhibit F is the final version of the letter from Caplin & Drysdale to the IRS, dated December 16, 2013. This letter was not provided to Dr. Engelberg at the time, or in discovery in the state court proceeding, but was disclosed by the Debtor in this proceeding.

9. Annexed hereto as Exhibit G is the declaration of Eliezer Perr dated April 13, 2009 and filed as Docket No. 18-2 in the U.S. District Court for the District of Columbia in a case styled *American Center for Civil Justice v. Joshua M. Ambush*, No. 1:09-cv-233-PLF.

10. Annexed hereto as Exhibit H is a copy of the Debtor's board minutes dated March 1, 2007. This was produced by the Debtor.

11. Annexed hereto as Exhibit I are excerpts from the transcript of the deposition of Jed Perr held in this proceeding on September 4, 2018 (cover page, appearances and pages 246-261). (The transcript is incorrectly dated August 4, 2018.)

12. Annexed hereto as Exhibit J is an October 24, 2012 email from JoAnn Luehring, Esq. to Jed Perr, previously filed by the Debtor as Docket No. 318-1 (Exhibit A to the Certification of Neal Sher, Esq.).

13. Annexed hereto as Exhibit K is a March 25, 2012 email from Jed Perr to Dr. Engelberg, with attachment (draft letter from Dr. Engelberg to Ms. Luehring dated March 28, 2012). This was previously filed as Exhibit 1 to the Certification of Michael Engelberg dated January 25, 2019, filed in this proceeding as Docket No. 323 (see below).

14. Annexed hereto as Exhibit L is Jed Perr's Supplemental Certification dated August 21, 2018, filed in this proceeding as Docket No. 206.

15. Annexed hereto as Exhibit M is a March 27, 2012 draft of a letter from ACCJ, by Michael Engelberg, to Ms. Luehring (similar to Exhibit K). This letter was attached to a Certification of Jed Perr filed in this proceeding by RLT (Doc. No. 206-18), and a copy of this document with handwritten notes was produced by RLT on August 30, 2018. ("RLT" refers to The American Center for Civil Justice, Religious Liberty And Tolerance, Inc.). Jed Perr was

questioned about this letter at his deposition, and none of the parties' counsel raised a privilege objection. See Exhibit I.

16. Annexed hereto as Exhibit N is a Certification of Michael Engelberg dated January 25, 2019, filed in this proceeding as Docket No. 323.

I hereby certify that the foregoing statements made by me are true. If any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Jeffrey E. Livingston
Jeffrey E. Livingston

Dated: New York, New York
January 31, 2019